



STATE OF INDIANA

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February 16, 2015

Ms. Debbie Lowe
C/o Carroll County Comet
P.O. Box 26
Flora, IN 46929

*Re: Formal Complaint 15-FC-15; Alleged Violation of the Open Door Law by the
Carroll County Board of Commissioners*

Dear Ms. Lowe,

This advisory opinion is in response to your formal complaint alleging the Carroll County Board of Commissioners ("Board"), violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded to your complaint via Counsel Mr. Ted Johnson, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 16, 2015.

BACKGROUND

Your complaint dated January 16, 2015, alleges the Carroll County Board of Commissioners violated the Open Door Law (Ind. Code § 5-14-1.5 *et. al.*) by holding inappropriate administrative function meetings.

You allege the Board conducted a series of improper administrative meetings to address subject matter which should be the subject of a public meeting conducted with notice. You provide the memoranda for the meetings in which you take exception.

Specifically, you cite to July 25, 2014 when the subject matter was a discussion of the County Economic Development Income Tax budget adoption; the position of the EMS Director and other staffing and scheduling issues; personnel policies; and the inspection of a workspace for the new County Coordinator.

An administrative function meeting was held August 4, 2014 to discuss items which would be on the Cumulative Capital Development budget; including a decision for a specific line item.

An administrative function meeting was held on September 2, 2014 to discuss the work product of the County Coordinator. Another meeting was held on September 11, 2014 to discuss a salary ordinance and a job posting. Finally, a meeting was held on November 21, 2014 to discuss an action of the County Council and other human resources considerations.

Furthermore, you allege the County Auditor is not present at many of these administrative functions to attest to the prepared memoranda. Instead, the Board attorney prepares the memoranda.

The Board responded to your formal complaint by stating a history of the administrative function meeting law within the Open Door Law. Moreover, it argues that administrative functions are “defined only by what they exclude: awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.”

ANALYSIS

Generally, public notice of the date, time, and place of any meeting of a governing body, shall be given at least forty-eight (48) hours before the meeting. See Ind. Code § 5-14-1.5-5. The forty-eight hour notice requirement does not apply to the following instance in subsection (f)(2):

the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts or any other action creating an obligation or otherwise binding a county or town.

It is common that three-member boards and councils face frustration and logistical challenges when complying with the Open Door Law. As two (2) of three (3) members constitute a majority, it is difficult to comply with the strict provisions requiring notice every time two (2) of three (3) discuss public business. To that end, the General Assembly provided county executives an exception to discuss internal management of their duties without notice. Those meetings must be open, but the traditional 48-hour notice is not required.

Furthermore, the Board seemingly takes the position the prohibitions listed in Ind. Code § 5-14-1.5-5(f)(2) is exhaustive as long as a board does not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town, then a discussion is appropriate. I disagree; the administrative function exception to notice is based solely on subject matter and not ultimate action taken.

Prior Public Access Counselors have also addressed this topic over the years. Please note the following interpretation of administrative functions from Counselor Joe Hoage in *Opinion of the Public Access Counselor 12-INF-36*:

[D]etermining whether a topic or action is appropriate for an administrative meeting generally requires a highly subjective review of the issues. The ODL does not contain a bright-line list of issues or subjects that are appropriate or prohibited from being discussed at an administrative meeting. Further, my review of the previously held administrative meetings is limited solely to the minutes that have been provided. In reviewing the previous opinions of the public access counselor that opined that an administrative meeting was proper, the subject matter primarily dealt with the function of carrying out the everyday or routine tasks necessary to ensure the proper management of the county or town. See *Opinion of the Public Access Counselor 07-FC-250*. It is my opinion that anytime there is the slightest hesitation on whether an administrative meeting would be appropriate, a meeting should not occur.

Consistent with this philosophy, as well as other PAC opinions dealing with the subject over the years, I draw the following conclusions based upon the five meetings in question.

July 25, 2014

The minutes of the July 25, 2014 meeting including discussion of the timing and plans for making a decision on the Economic Development Income Tax budget. Discussing whether the governing body was prepared to vote has been declared inappropriate for an administrative function meeting in *Opinion of the Public Access Counselor 08-FC-186*.

Discussion of the position of the EMS director and the need to make decisions on EMS staffing and the director's job requirements are appropriate, however, because the Board is merely indicating the need to make a decision in the future (presumably in a public meeting) which would be a prerequisite filling the position. Similarly, a discussion of the need to reexamine policies would be administrative, but not the reexamination process itself. Finally, scheduling a meeting and an inspection of a workspace is administrative as well.

August 4, 2014

In regard to the Cumulative Capital Development budget, the minutes of this meeting indicate "The Commissioners decided to keep \$20,000.00 in ADA Compliance and \$50,000.00 in Ambulance. It was decided to increase to \$50,000.00 the amount in the 3rd Ambulance Garage and to add \$110,000.00 to the County Security line."

Regardless of whether the decisions were not “binding on the county” as the Board argues, the alteration of a budget is unequivocally public business which goes beyond the internal management of a unit – even if it is just switching around line items. Public appropriations and expenditures are not what are intended by the definition of ‘administrative’. See also *Opinion of the Public Access Counselor 04-FC-154*.

September 2, 2014

The minutes of this meeting document a conference with the County Coordinator on completed and pending assignments and projects as well as discussion of training and transition of a replacement of a payroll clerk. This is a clear example of an administrative function which is permissible under the Open Door Law. See *Opinion of the Public Access Counselor 12-FC-77*. This is the only meeting, in my determination, which has not violated the Open Door Law.

September 11, 2014

This meeting involved a discussion of a proposed salary ordinance and requirements of a job posting. Discussion of a salary ordinance is not solely internal management. It involves public funds and is public business. The requirements of the job posting however, is administrative in nature.

November 21, 2014

This meeting involved the discussion of another governing body’s decision to defund the position of County Coordinator. The Board received input from other staff members and elected officials about the action. Discussion of another governing body’s action is a *de facto* externality. Just because it may have an *effect* on internal management does not thereby qualify it as an administrative function. See *Opinion of the Public Access Counselor 98-FC-05*.

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14- 1.5-2(d).

The Board seemingly fails to realize mere discussion of matters of public business triggers the Open Door Law. Administrative function is subject matter specific and may allow them to hold a meeting without notice; however, the exception is narrowly restricted to internal management issues. These issues should be solely exclusive to the

routine, day-to-day items needed to carry out administrative and executive tasks. The scope is indeed limited.

To wit, the Indiana Open Door Law and the Access to Public Records Act are unique among Indiana Statutes in that the General Assembly includes a “preamble” setting forth the legislature’s intent:

In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.

Ind. Code § 5-14-1.5-1.

Conversely, liberal construction of the access statutes requires narrow construction of its exceptions. See *Common Council of Peru v. Peru Daily Tribune, Inc.*, 440 N.E.2d 726 (1982).

The Carroll County Board of Commissioners has taken a broad and casual interpretation of administrative function. With the exception of the September 2, 2014 meeting, I do not believe discussions of the subject matter listed above meet the intent or the letter of the Open Door Law.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Carroll County Board of Commissioners has violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping horizontal line underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Ted Johnson, Esq.